

Department of Health and Human Services

§ 32.8

paper hearing, that is, the issues in dispute will be decided based upon a review of the written record.

(2) The hearing official shall notify the debtor of the deadline for the submission of additional evidence if necessary for a review of the record.

(e) *Burden of proof.* (1) The Secretary has the initial burden of proving the existence or amount of the debt.

(2) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must present by a preponderance of the evidence that no debt exists or that the amount is incorrect. When challenging the terms of a repayment schedule, the debtor must establish by a preponderance of the evidence that the terms of the repayment schedule are unlawful, would cause financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

(f) *Record.* The hearing official shall maintain a summary record of any hearing provided under this part. A hearing is not required to be a formal evidentiary-type hearing, but witnesses who testify in an oral hearing must do so under oath or affirmation.

(g) *Date of decision.* (1) The hearing official shall issue a written decision, as soon as practicable, but no later than sixty (60) days after the date on which the request for the hearing was received by the Department.

(2) If the hearing official is unable to provide the debtor with a hearing and render a decision within 60 days after the receipt of the request for such hearing:

(i) A withholding order may not be issued until the hearing is held and a decision is rendered; or

(ii) A withholding order previously issued to the debtor's employer must be suspended beginning on the 61st day after the receipt of the hearing request and continuing until a hearing is held and a decision is rendered.

(h) *Content of decision.* The written decision shall include:

(1) A summary of the facts presented;

(2) The hearing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedule, if applicable.

(i) *Final agency action.* The hearing official's decision will be the final

agency action for the purposes of judicial review under the Administrative Procedure Act. 5 U.S.C. 701 *et seq.*

(j) *Failure to appear.* In the absence of good cause shown, a debtor who fails to appear at a hearing will be deemed as not having timely filed a request for a hearing.

§ 32.6 Withholding order.

(a) Unless the Secretary receives information that the Secretary determines justifies a delay or cancellation of a withholding order, the Secretary shall send, by first class mail, an SF-329A "Letter to Employer & Important Notice to Employer," an SF-329B "Wage Garnishment Order," an SF-329C "Wage Garnishment Worksheet," and an SF-329D "Employer Certification," to the debtor's employer within 30 days after the debtor fails to make a timely request for a hearing, *i.e.*, within 15 business days after mailing the notice required under this part, or, if the timely request for a hearing is made by the debtor, within 30 days after a final decision is made by the Secretary to proceed with garnishment.

(b) The Secretary shall keep a copy of the dated letter to the employer and a copy of the wage garnishment order. The certificate of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

§ 32.7 Certification by employer.

The employer must complete and return the SF-329D, "Employer Certification" to the Department within 20 days of receipt.

§ 32.8 Amounts withheld.

(a) After receipt of a withholding order issued under this part, the employer shall deduct from all disposable pay paid to the debtor during each pay period the amount of garnishment described in paragraph (b) of this section. The employer may use the SF-329C "Wage Garnishment Worksheet" to calculate the amount to be deducted from the debtor's disposable pay.

(b) Subject to paragraphs (c) and (d) of this section, the amount of garnishment shall be the lesser of: